

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 18

WCC No. 2006-1697

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LEE A. MILLER

Petitioner

vs.

LIBERTY MUTUAL FIRE INSURANCE CORPORATION

Respondent/Insurer.

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ORDER DENYING RESPONDENT'S MOTION TO DISMISS

**Summary:** Respondent moved to dismiss Petitioner's Petition for Trial on the grounds that this Court lacks jurisdiction to hear Petitioner's constitutional challenge to an administrative rule under the Montana Supreme Court's holding in *Thompson v. State of Montana and Liberty Northwest Ins. Corp.*<sup>1</sup> as Petitioner's claim does not make a direct claim for benefits. Petitioner responded that his claim does make a direct claim for benefits and furthermore, that the holding of *Thompson* does not preclude this Court's jurisdiction in cases where indirect claims for benefits are made but only in cases where no claims for benefits are made. The Department of Labor and Industry as *amicus curiae* argued that Petitioner's claim involves a claim for benefits and that this Court therefore has jurisdiction to hear the case.

**Held:** In his Petition for Trial, Petitioner's prayer for relief includes asking the Court to order Respondent to pay for medical expenses for which Respondent has denied coverage because Petitioner did not obtain preauthorization as required by ARM 24.29.1515(2), the administrative rule which Petitioner argues is unconstitutional. Therefore, Respondent is mistaken in its assertion that Petitioner did not make a direct claim for benefits and this Court does have jurisdiction to hear Petitioner's claim. Whether Respondent is correct in asserting that *Thompson* does not allow this Court to hear constitutional issues which indirectly involve a claim for benefits is immaterial.

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<sup>1</sup> 2007 MT 185, 338 Mont. 511, 167 P.3d 867.

¶ 1 Respondent Liberty Mutual Fire Insurance Corporation moves this Court to dismiss Petitioner Lee A. Miller's Petition for Trial. The Department of Labor and Industry also responds to Respondent's brief as *amicus curiae*. Respondent's motion is based on its argument that this Court lacks jurisdiction to hear Petitioner's constitutional challenge to ARM 24.29.1515(2). Respondent argues that in *Thompson v. State of Montana and Liberty Northwest Ins. Corp.*,<sup>2</sup> the Montana Supreme Court defined this Court's jurisdiction to hear a constitutional challenge and that the circumstances of the present case fall outside the jurisdiction of this Court as defined in *Thompson*.

¶ 2 In *Fleming v. International Paper Company*, this Court noted:

Motions to dismiss are viewed with disfavor and will be granted only where the allegations of the petition or complaint either show that the claimant is not entitled to relief of any sort, or discloses an "insuperable bar" to recovery . . . . For purposes of the motion, all well pleaded allegations of the petition are deemed true.<sup>3</sup>

¶ 3 For purposes of the present motion, Petitioner's allegations as pled in his Petition for Trial are deemed true. In summary, Petitioner alleges that he sought necessary treatment for a compensable injury for which Respondent did not give its preauthorization and for which Respondent then denied payment.<sup>4</sup> In that regard, Petitioner requested the following relief:

¶3a That the workers' compensation insurer pay for medical expenses incurred at the Mayo Clinic and [H]ospital and trip costs associated with medical care and treatment at the Mayo Clinic and Hospital;

¶3b As applied here, the Court determine the administrative rule at issue here is unconstitutional;

¶3c That the Court determine it has jurisdiction over the constitutionality of the Department's rules;

¶3d The Court assess such attorneys fees, costs, and penalties as are prescribed by law;

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<sup>2</sup> 2007 MT 185, 338 Mont. 511, 167 P.3d 867.

<sup>3</sup> 2005 MTWCC 35, ¶ 4 (internal citations omitted).

<sup>4</sup> Petition for Trial, Docket Item No. 1.

¶3e For such other and further relief as to the Department of Labor and Industry seems just.<sup>5</sup>

¶ 4 In its brief in support of its motion, Respondent argues that the dissent in *Thompson* demonstrates that the majority did not just hold that this Court lacks jurisdiction to hear constitutional challenges in cases where no benefits were at issue. Respondent argues that the majority's holding is that this Court also lacks jurisdiction if benefits are indirectly involved. Respondent argues that Petitioner has not made a direct claim for specific benefits in this case but only an indirect claim for benefits. Therefore, pursuant to Respondent's interpretations of the dissent in *Thompson*, this Court lacks jurisdiction to hear Petitioner's case.

¶ 5 Petitioner responds that by relying only on the dissent, Respondent misinterprets the holding in *Thompson*, which stated only that this Court had no jurisdiction to hear a constitutional challenge where "**no** benefits are at issue."<sup>6</sup> Petitioner further argues that, in the present case, Petitioner has made a direct claim for benefits and, therefore, even if Respondent's *Thompson* argument were correct, it nonetheless would not apply to the facts of this case.<sup>7</sup> The Department of Labor and Industry argues similarly, and further points out that Respondent only cites to the *Thompson* dissent in making its argument and argues that Respondent's motion should therefore fail since the dissent does not serve as precedent.<sup>8</sup>

¶ 6 Respondent replies that since Petitioner chose to obtain medical treatment for which preauthorization had not been granted rather than to file a petition in this Court at that time challenging Respondent's denial of preauthorization, Petitioner's current claim is a "challenge . . . to a procedure and not directly a challenge to a benefit entitlement."<sup>9</sup>

¶ 7 With respect to Respondent's reliance on the dissent in *Thompson*, I have previously noted that it is a fundamental rule of jurisprudence that when deciding which appellate court opinion to follow, the one with the most signatures at the end wins.<sup>10</sup> I need

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<sup>5</sup> Petition for Trial at 6.

<sup>6</sup> *Thompson*, ¶ 26 (emphasis added).

<sup>7</sup> Miller's Response to Insurer's Rule 12(b)(1) Motion to Dismiss, Docket Item No. 18.

<sup>8</sup> Department of Labor and Industry's Response to Liberty's Motion to Dismiss Rule 12(b)(1), Docket Item No. 21.

<sup>9</sup> Liberty's Answer Brief in Support of Motion to Dismiss, Docket Item No. 19 at 1.

<sup>10</sup> *Dildine v. Liberty Northwest Ins. Corp.*, 2008 MTWCC 14, ¶ 4.

not invoke this ancient (Now over three weeks old!) legal maxim from *Shea On Jurisprudence* in the present case, however, because Respondent's reliance on the *Thompson* dissent, even if correct, is factually misplaced.

¶ 8 While it is true that Petitioner is challenging the constitutionality of the procedure set forth at ARM 24.29.1515(2), it is equally true that Petitioner is asking this Court to hold Respondent liable for certain medical benefits. The very language of Petitioner's Petition for Trial illustrates that benefits are directly at issue in this case. Therefore, Respondent's argument that *Thompson's* dissent illustrates that the majority actually held that this Court has no jurisdiction to hear an "indirect" claim for benefits is inapposite to the present dispute.

¶ 9 As noted above, motions to dismiss will be granted only where the allegations of the petition or complaint either show that the claimant is not entitled to relief of any sort, or disclose an "insuperable bar" to recovery. Respondent has not proven this to be the situation in the case at bar. Its motion to dismiss is therefore denied.

#### JUDGMENT

¶ 10 Respondent's motion to dismiss is **DENIED**.

DATED in Helena, Montana, this 25th day of April, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Lawrence A. Anderson  
Larry W. Jones  
Judy Bovington (Courtesy copy)  
Mark Cadwallader (Courtesy copy)  
Submitted: December 21, 2007